

SENATE BILL 1845
By Herron

AN ACT to amend Tennessee Code Annotated, Title 4,
Chapter 4 and Title 50, Chapter 3, relative to
secondhand smoke.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 3, is amended by
adding the following language:

§ 50-3-1001. This act shall be known and may be cited as the "Tennessee Clean Indoor
Air Act."

§ 50-3-1002. The purpose of this act is to protect people from the potential health
hazards of secondhand smoke which include lung cancer, heart disease, respiratory
infection, and decreased respiratory function, including bronchospasm and to recognize
an adult's right to use tobacco products outside of enclosed indoor workplaces.

§ 50-3-1003. As used in this act, unless the context otherwise requires:

(1) "Commercial use of a private residence" means any time during which the
owner, lessee, or other person occupying or controlling the use of the private residence
is furnishing in the private residence, or causing or allowing to be furnished in the private
residence, child care, adult care, or health care, or any combination thereof, and
receiving or expecting to receive compensation for such services;

(2) "Department" means the department of labor and workforce development;

(3) "Designated smoking guest rooms at public lodging establishments" means
the sleeping rooms and directly associated private areas, such as bathrooms, living
rooms, and kitchen areas, if any, rented to guests for their exclusive transient occupancy
in public lodging establishments, including hotels, motels, resort condominiums,

transient apartments, transient lodging establishments, rooming houses, boarding houses, resort dwellings, bed and breakfast inns, and the like that are designated by the person or persons having management authority over such public lodging establishment as rooms in which smoking may be permitted;

(4) "Enclosed indoor workplace" means any place where one or more persons engages in work, and which place is predominantly or totally bounded on all sides and above by physical barriers, regardless of whether such barriers consist of or include, without limitation, uncovered openings, screened or otherwise partially covered openings, or open or closed windows, jalousies, doors, or the like. A place is "predominantly" bounded by physical barriers during any time when both of the following conditions exist:

(a) It is more than fifty percent (50%) covered from above by a physical barrier that excludes rain, and

(b) More than fifty percent (50%) of the combined surface area of its sides is covered by closed physical barriers. In calculating the percentage of side surface area covered by closed physical barriers, all solid surfaces that block air flow, except railings, must be considered as closed physical barriers. This section applies to all such enclosed indoor workplaces and enclosed parts thereof without regard to whether work is occurring at any given time.

(c) The term does not include any facility owned or leased by and used exclusively for noncommercial activities performed by the members and guests of a membership association, including social gatherings, meetings, dining, and dances, if no person or persons are engaged in work as defined in subsection (10);

(5) "Essential services" means those services that are essential to the maintenance of any enclosed indoor room, including, but not limited to, janitorial services, repairs, or renovations;

(6) "Physical barrier" includes an uncovered opening, a screened or otherwise partially covered opening, or an open or closed window, jalousie, or door;

(7) "Retail tobacco shop" means any enclosed indoor workplace dedicated to or predominantly for the retail sale of tobacco, tobacco products, and accessories for such products, in which the sale of other products or services is merely incidental. Any enclosed indoor workplace of a business that manufactures, imports, or distributes tobacco products or of a tobacco leaf dealer is a business dedicated to or predominantly for the retail sale of tobacco and tobacco products when, as a necessary and integral part of the process of making, manufacturing, importing, or distributing a tobacco product for the eventual retail sale of such tobacco or tobacco product, tobacco is heated, burned, or smoked or a lighted tobacco product is tested;

(8) "Secondhand smoke," also known as environmental tobacco smoke (ETS), means smoke emitted from lighted, smoldering, or burning tobacco when the smoker is not inhaling; smoke emitted at the mouthpiece during puff drawing; and smoke exhaled by the smoker;

(9) "Smoking" means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product;

(10) "Work" means any person's providing any employment or employment-type service for or at the request of another individual or individuals or any public or private entity, whether for compensation or not, whether full or part time, whether legally or not. "Work" includes, without limitation, any such service performed by an employee,

independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant, volunteer, and the like. The term does not include noncommercial activities performed by members of a membership association;

(11) "Membership association" means a charitable, nonprofit, or veterans' organization that holds a current exemption under §§ 501(c)(3), (4), (7), (8), (10), or (19) or § 501(d) of the Internal Revenue Code.

§ 50-3-1004. A person may not smoke in an enclosed indoor workplace, except as otherwise provided in § 50-3-1005.

§ 50-3-1005. Notwithstanding § 50-3-1004, tobacco smoking may be permitted in each of the following places:

(a) A private residence whenever it is not being used commercially to provide child care, adult care, or health care, or any combination thereof as defined in § 50-3-1003(1);

(b) An enclosed indoor workplace dedicated to or predominantly for the retail sale of tobacco, tobacco products, and accessories for such products, as defined in § 50-3-1003(7);

(c) A designated smoking guest room at a public lodging establishment as defined in § 50-3-1003(3); and

(d) An enclosed indoor workplace, to the extent that tobacco smoking is an integral part of a smoking cessation program approved by the department, or medical or scientific research conducted therein. Each room in which tobacco smoking is permitted must comply with the signage requirements in § 50-3-1006.

§ 50-3-1006.

(a) The person in charge of an enclosed indoor workplace must conspicuously post, or cause to be posted, signs stating that smoking is not permitted in the enclosed

indoor workplace. Each sign posted pursuant to this section must have letters of reasonable size which can be easily read. The color, design, and precise place of posting of such signs shall be left to the discretion of the person in charge of the premises.

(b) The proprietor or other person in charge of an enclosed indoor workplace must develop and implement a policy regarding the smoking prohibitions established in this part. The policy may include, but is not limited to, procedures to be taken when the proprietor or other person in charge witnesses or is made aware of a violation of § 50-3-1004 in the enclosed indoor workplace and must include a policy which prohibits an employee from smoking in the enclosed indoor workplace. In order to increase public awareness, the person in charge of an enclosed indoor workplace may, at his or her discretion, post "NO SMOKING" signs as deemed appropriate.

(c) The proprietor or other person in charge of an enclosed indoor workplace where a smoking cessation program, medical research, or scientific research is conducted or performed must conspicuously post, or cause to be posted, signs stating that smoking is permitted for such purposes in designated areas in the enclosed indoor workplace. Each sign posted pursuant to this section must have letters of reasonable size which can be easily read. The color, design, and precise locations at which such signs are posted shall be left to the discretion of the person in charge of the premises.

§ 50-3-1007.

(a) The department shall adopt, in consultation with the state fire marshal, rules specifying procedures to be followed by enforcement personnel in investigating complaints and notifying alleged violators and rules specifying procedures by which appeals may be taken by aggrieved parties subject to the provisions of the Uniform Administrative Procedures Act, title 4, chapter 5, part 3.

(b) Public agencies responsible for the management and maintenance of government buildings shall report observed violations to the department. The state fire marshal shall report to the department observed violations of this part found during its periodic inspections conducted under its regulatory authority.

(c) The department, upon notification of observed violations of this part, shall issue to the proprietor or other person in charge of such enclosed indoor workplace a notice to comply with this part. If the person fails to comply within thirty (30) days after receipt of the notice, the department shall assess a civil penalty against the person of not less than two hundred fifty dollars (\$250) and not to exceed seven hundred fifty dollars (\$750) for the first violation and not less than five hundred dollars (\$500) and not to exceed two thousand dollars (\$2,000) for each subsequent violation. If a person refuses to comply with this part, after having been assessed such penalty, the department may file a complaint in the circuit court of the county in which the enclosed indoor workplace is located to require compliance.

(d) Any proprietor or other person in charge of an enclosed indoor workplace who discharges or in any other manner discriminates against any employee in the terms or conditions of employment because such employee has reported a violation of this act or has provided information in furtherance of enforcement of this act shall be liable for all relief necessary to make the employee whole, including reinstatement with the same seniority status that the employee would have had but for the discrimination, two (2) times the amount of back pay and interest on the back pay. In addition, the defendant shall be required to pay litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate chancery court of the state for the relief provided in this subsection.

§ 50-3-1008. A violation of § 50-3-1004 is a Class B misdemeanor and is punishable only by a fine of not more than one hundred dollars (\$100) for the first violation and not more than five hundred dollars (\$500) for each subsequent violation. Jurisdiction shall be with the appropriate general sessions court.

§ 50-3-1009.

(a) This part expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject.

(b) The provisions of this act shall preempt the provisions of the Children's Act for Clean Indoor Air, title 39, chapter 17, part 16, when there is a conflict between the acts.

SECTION 2. Tennessee Code Annotated, Title 4, Chapter 4, is amended by deleting § 4-4-121 in its entirety.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect July 1, 2005 the public welfare requiring it.